



Attorney General, by and through Assistant Attorney General Melissa A. Cullmann, for its Petition for Preliminary and Permanent Injunctions, Restitution, Civil Penalties and Other Court Orders, against Montgomery Auto Group, LLC, Robby G. Montgomery, and Floorplan Xpress, LLC and upon information and belief states as follows:

### **PARTIES**

1. Chris Koster is the duly elected, qualified, and acting Attorney General of the State of Missouri and brings this action in his official capacity pursuant to Chapter 407, RSMo 2010.<sup>1</sup>

2. Defendant Montgomery Auto Group, LLC (“Auto Group”) is a Missouri limited liability company that transacts business in Greene County, Missouri, among other places. Its principal place of business is located at 925 South Glenstone Avenue, Springfield, Missouri 65802.

3. Defendant Robby G. Montgomery (“Montgomery”) is an individual who transacted business in Greene County, Missouri, among other places as Montgomery Auto Group, LLC. Defendant Montgomery resides at 2348 South Farm Road 111, Springfield, Missouri 65802.

4. Floorplan Xpress LLC (“Xpress”) is a Missouri limited liability

---

<sup>1</sup> All references are to Missouri Revised Statutes 2010, unless otherwise noted. Where a citation gives a supplement year—*e.g.* “(Supp. 2012)” —the citation is to the version of the statute that appears in the corresponding supplementary version of the Missouri Revised Statutes, and, where relevant, to identical versions published in previous supplements.

company registered with the Missouri Secretary of State that transacts business in Greene County, Missouri, among other places. It is headquartered at 4300 Highline Boulevard, Suite B330, Oklahoma City, Oklahoma 73108.

5. Defendant Xpress' registered agent, Craig Owens, is located at 8801 East 63rd Street, Suite 104, Raytown, Missouri 64133.

6. Any acts, practices, methods, uses, solicitations or conduct of the Defendants alleged in this Petition include the acts, practices, methods, uses, solicitations or conduct of Defendants and Defendants' employees, agents, or other representatives acting under Defendants' direction, control, or authority.

7. Defendants have done business within the State of Missouri by marketing, advertising, financing, offering for sale, and selling automobiles to persons within the State of Missouri.

### **JURISDICTION**

8. Jurisdiction is properly vested with this Court under Art. V, § 14 Mo. Const.

9. This Court has subject matter and personal jurisdiction over the Defendants under Art. V, § 14 Mo. Const.

10. This Court has authority over this action pursuant to § 407.100, which allows the Attorney General to seek injunctive relief, restitution,

penalties, and other relief in circuit court against persons who violate § 407.020.

### **VENUE**

11. Venue is proper in this Court pursuant to § 407.100.7, which provides that “[a]ny action under this section may be brought in the county in which the defendant resides, in which the violation alleged to have been committed occurred, or in which the defendant has his principal place of business.”

12. Defendants have marketed, advertised, financed, offered, and sold automobiles in Greene County, Missouri, and have engaged in the acts, practices, methods, uses, solicitation and conduct described below that violate § 407.020, RSMo in Greene County, Missouri.

### **MERCHANDISING PRACTICES ACT**

13. Section 407.020 of the Merchandising Practices Act provides in pertinent part:

1. The act, use or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce or the solicitation of any funds for any charitable purpose, as defined in section 407.453, in or from the state of Missouri, is declared to be an unlawful practice... Any act, use or employment

declared unlawful by this subsection violates this subsection whether committed before, during or after the sale, advertisement, or solicitation.

14. “Person” is defined as “any natural person or his legal representative, partnership, firm, for-profit or not-for-profit corporation, whether domestic or foreign, company, foundation, trust, business entity or association, and any agent, employee, salesman, partner, officer, director, member, stockholder, associate, trustee or cestui que trust thereof.” § 407.010(5).

15. Wholesalers are “persons” liable for violations of the Merchandising Practices Act, and privity with consumer is not required. *Gibbons v. J. Nuckolls, Inc.*, 216 S.W. 3d 667, 670 (Mo. 2007).

16. “Merchandise” is defined as “any objects, wares, goods, commodities, intangibles, real estate, or services.” § 407.010(4).

17. “Trade” or “commerce” is defined as “the advertising, offering for sale, sale, or distribution, or any combination thereof, of any services and any property, tangible or intangible, real, personal, or mixed, and any other article, commodity, or thing of value wherever situated. The terms “trade” and “commerce” include any trade or commerce directly or indirectly affecting the people of this state.” § 407.010(7).

18. Defendants have advertised, marketed, and sold merchandise in trade or commerce within the meaning of § 407.010.

19. Pursuant to authority granted in § 407.145, the Attorney General has promulgated rules explaining and defining terms utilized in Sections 407.010 to 407.145 of the Merchandising Practices Act. Said Rules are contained in the Missouri Code of State Regulations (CSR). The rules relevant to the Merchandising Practices Act allegations herein include, but are not limited to, the provisions of 15 CSR 60-3.010 to 15 CSR 60-14.040. These rules are adopted and incorporated by reference.

### **SALE AND TRANSFER OF VEHICLES**

20. Section 301.210 of the Missouri Revised Statutes provides in pertinent part:

1. In the event of a sale or transfer of ownership of a motor vehicle or trailer for which a certificate of ownership has been issued, the holder of such certificate shall endorse on the same an assignment thereof, with warranty of title in form printed thereon, and prescribed by the director of revenue, with a statement of all liens or encumbrances on such motor vehicle or trailer, and deliver the same to the buyer at the time of the delivery to him of such motor vehicle or trailer...

21. Dealer, as the certificate owner of a vehicle, has a legal right to transfer possession of a vehicle to a buyer pending completion of the sale. Physical transfer of possession creates an executor contract between dealer and buyer which grants buyer the right to compel assignment of the certificates of ownership from dealer; and consequently the right to seek

delivery of the certificates from floor plan financier. *Bradley v. K & E Investments*, 847 S.W.2d 915, 920 (Mo. App. 1993)

22. An automobile dealership's creditor's possession of certificate of ownership is not a substitute for lien perfection. *Id* at 922.

### **UNIFORM COMMERCIAL CODE**

23. UCC Article 9 § 1-201 defines a buyer in the ordinary course of business as one who in good faith buys goods from a business that sells goods of that kind, without knowledge that the sale violates the rights of another person.

### **ALLEGATIONS OF FACT RELEVANT TO ALL COUNTS**

24. Defendant Xpress sells financing services to automobile dealerships.

25. Defendant Montgomery began operating Defendant Auto Group in 2007 as an automobile dealership that marketed, advertised, offered to sell and sold automobiles to Missouri consumers.

26. Defendant Xpress loaned Defendant Auto Group approximately \$150,000 in exchange for a purchase money security interest in Defendant Auto Group's inventory of automobiles so that Defendant Auto Group could purchase inventory.

27. Defendant Xpress kept physical possession of the certificates of title of the automobiles in Defendant Auto Group's inventory.

28. Defendant Xpress withheld transfer of titles as substitution for valid perfection of a lien or encumbrance against the automobiles.

29. Defendant Xpress attempted to perfect their lien or encumbrance by holding vehicle certificates of title, a manner outside of the perfection methods proscribed by §§ 301.600 to 301.660, RSMo and UCC Article 9.

30. When Defendant Auto Group sold an automobile to a consumer, Defendant Auto Group was required to pay Defendant Xpress before Xpress would release the title to Auto Group.

31. Defendants Auto Group and Montgomery collected payments from consumers for the automobiles they sold and delivered but did not make payment to Defendant Xpress.

32. Defendants Auto Group and Montgomery sold and delivered vehicles to consumers promising to provide certificates of title within thirty days but failed to do so.

33. Defendant Xpress knew Defendants Auto Group and Montgomery sold and delivered cars, that Defendant Xpress held the certificates of title for, to consumers without transferring the title at the time of sale or transfer of the vehicle.



34. Defendant Xpress' physical possession of the certificates of title prevented the title from being transferred at the time of sale.

35. Consumers were unable to register their automobiles after purchase and delivery because of Defendant Xpress' retention of the certificates of title.

36. Without a properly registered certificate of titles, a consumer cannot legally drive an automobile.

37. Defendants Auto Group and Montgomery have not provided refunds to consumers who did not receive a certificate of title.

38. As a result of Defendants' actions, at least ten consumers have paid or financed approximately \$81,455.00 for automobiles they are unable to drive.

#### Consumer Examples

39. Defendants Auto Group and Montgomery sold vehicles to the following consumers and did not provide titles at the time of sale or at any point thereafter:

- a. Laurie Beach, who contracted with Defendants on or about May 18, 2013, purchased and accepted delivery of a 1999 Dodge Dakota for \$10,209.00;

b. Patrick Creamer, who contracted with Defendants on or about May 4, 2013, purchased and accepted delivery of a 2006 Mini Cooper for \$10,639.00;

c. Jason DiGirolamo, who contracted with Defendants on or about April 16, 2013, purchased and accepted delivery of a 2003 Ford F-250 for \$10,000;

d. Jerry Vanhorn, who contracted with Defendants on or about May 3, 2013, purchased and accepted delivery of a 2005 Dodge Ram for \$12,739.00.

40. Defendants Auto Group and Montgomery sold vehicles to the following consumers and did not provide titles at the time of sale but the consumers recovered the title at a later date:

a. Terance Bridges, who contracted with Defendants on or about April 12, 2013, purchased and accepted delivery of a 2005 Volkswagen Touareg for \$11,995.00. He received the certificate of title to the vehicle on or around late July 2013, from Automotive Finance Corporation;

b. Tina McConnell, who contracted with Defendants on or about April 9, 2013, purchased and accepted delivery of a 2008 Kia Sportage for \$10,300.00. She received the certificate of title to the vehicle on August 27, 2013, from Automotive Finance Corporation;

c. Joseph Childers Jr., who contracted with Defendants on or about April 25, 2013, purchased and accepted delivery of a 2006 Chevrolet Malibu for \$7,839.00. He received title in or around late July 2013, from Manheim Automotive Finance Services;

d. Patrick Creamer, who contracted with Defendants on or about May 4, 2013, purchased and accepted delivery of a 2006 Mini Cooper for \$10,639.00. He received title in or around late September 2013, from Defendant Xpress after paying an additional \$4,000 to Defendant Xpress;

e. Charles Perry, who contracted with Defendants on or about April 25, 2013, purchased and accepted delivery of a 2004 Chevy Tahoe Z71 for \$10,000.00;

41. Defendants Auto Group and Montgomery sold vehicles to the following consumers and did not provide titles at the time of sale and later refused to sign titles that consumers eventually received at a later date:

a. Mallery DeJonge, who contracted with Defendants on or about May 9, 2013, purchased and accepted delivery of a 2005 Volkswagen for \$8,034.00. She received the certificate of title to the vehicle in or around July 2013 from Automotive Finance Corporation;

b. Johnny Eakins, who contracted with Defendants on or about March 26, 2013, purchased and accepted delivery of a 2003 Chevrolet

Avalanche for \$11,995.00. He received the certificate of title for the vehicle on or about July 2, 2013, from Automotive Finance Corporation.

## **VIOLATIONS OF LAW**

### **COUNT I: FALSE PROMISE**

#### **Against Defendants Montgomery and Auto Group**

42. Plaintiff incorporates all allegations stated above.

43. Defendants Montgomery and Auto Group violated Section 407.020 by falsely promising consumers that within thirty days of purchasing the vehicle, Defendants would provide the vehicle's title to the consumer, a statement which was false or misleading as to Defendants' intention or ability to perform the promise, or likelihood the promise would be performed.

### **COUNT II: DECEPTION**

#### **Against Defendants Montgomery and Auto Group**

44. Plaintiff incorporates all allegations stated above.

45. Defendants Montgomery and Auto Group violated Section 407.020 by using deception in that Defendants engaged in acts or practices which had the tendency or capacity to mislead, deceive, or cheat and tended to create the false impression that Defendants had the ability to transfer the

certificates of title for the vehicles being sold and delivered to consumers when in fact Defendants did not physically possess the certificates of title.

**COUNT III: CONCEALMENT, SUPPRESSION,  
OR OMISSION OF A MATERIAL FACT  
Against Defendants Montgomery and Auto Group**

46. Plaintiff incorporates all allegations stated above.

47. Defendants Montgomery and Auto Group violated Section 407.020 by concealing, suppressing, or omitting, the material fact that Defendants did not physically possess the certificates of title to be able to transfer them to consumers at the time of delivery.

**COUNT IV: UNFAIR PRACTICE  
Against Defendants Montgomery, Auto Group, and Xpress**

48. Plaintiff incorporates all allegations stated above.

49. Defendants Montgomery, Auto Group, and Xpress violated Section 407.020 by engaging in the method, use or practice of selling and delivering automobiles to consumers without passing or transferring title which violates § 301.210, RSMo, a statute intended to protect the public.

50. Defendants' violation presents the risk of, and causes substantial injury to consumers because violations of § 301.210 harmed, and will continue to harm, consumers.

**RELIEF**

WHEREFORE, Plaintiff prays this Court enter judgment:

A. Finding that the Defendants violated the provisions of Section 407.020.

B. Issuing Preliminary and Permanent Injunctions issued pursuant to §§ 407.100.1 and 407.100.2 prohibiting and enjoining the Defendants and their agents, servants, employees, representatives and other individuals acting at its direction or on its behalf from selling automobiles in the State of Missouri.

C. Issuing Preliminary and Permanent Injunctions that require the Defendants and their agents, servants, employees, representatives and other individuals acting at their direction or on their behalf to transfer titles on vehicles purchased by consumers to any and all consumers who purchased vehicles prior to the filing of this action and have not received properly executed title.

D. Requiring the Defendants pursuant to § 407.100.4 to provide full restitution to all consumers who suffered any ascertainable loss, including but not limited to any monies or property acquired by Defendants through unlawful practices.

E. Requiring the Defendants pursuant to § 407.100.6 to pay the State of Missouri a civil penalty in such amounts as allowed by law per violation of Chapter 407 that the Court finds to have occurred.

F. Requiring the Defendants pursuant to § 407.140.3 to pay to the State an amount of money equal to ten percent (10%) of the total restitution ordered against the Defendant, or such other amount as the Court deems fair and equitable.

G. Requiring the Defendants pursuant to § 407.130 to pay all court, investigative and prosecution costs of this case.

H. Granting any further relief that this Court deems proper in the premise.

Respectfully submitted,

CHRIS KOSTER  
Attorney General

/s/ Melissa Cullmann  
Melissa Cullmann, MO Bar #65860  
Assistant Attorney General  
P.O. Box 899  
Jefferson City, MO 65102  
(573) 751-3376; Fax (573) 751-2041  
Melissa.Cullmann@ago.mo.gov

ATTORNEYS FOR PLAINTIFF